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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

16 VERNON UNSWORTH,
17 Plaintiff,
18 vs.
19 ELON MUSK,
20 Defendant.

| Case No. 2:18-cv-08048

Judge: Hon. Stephen V. Wilson

**EX PARTE APPLICATION FOR
AN ORDER PERMANENTLY
SEALING DECLARATION OF
JARED BIRCHALL IN
SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT (DKT. #61)**

Complaint Filed: September 17, 2018
Trial Date: December 2, 2019

Hearing Date: October 28, 2019
Time: 1:30 p.m.
Courtroom: 10A

1 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that Defendant Elon Musk hereby applies to this
4 Court *ex parte*, pursuant to Local Rule 7-19, for an Order permanently sealing
5 Docket Entry #61 entitled “Declaration of Jared Birchall in support of Defendant’s
6 Motion for Summary Judgement or in the alternative Partial Summary Judgment”
7 (“Birchall Declaration”). This Application is necessary because one page of Exhibit
8 D thereto, and two pages of Exhibit E thereto contain personal information
9 regarding the Plaintiff (address, passport information, and birth date) that was
10 inadvertently not redacted at the time that the Birchall Declaration was filed with the
11 Court.

12 Defendant’s counsel was unaware that the personal information had been
13 filed until Plaintiff’s counsel raised the issue on the evening on September 16, 2019
14 and requested its immediate removal. Upon discovering this error, counsel for
15 Defendant immediately filed an Administrative Motion to Remove the Document
16 from ECF (DKT #66), and filed a redacted version of the Birchall Declaration (at
17 DKT #65). The clerk of this Court has kindly informed Defendant’s counsel that
18 the proper mechanism to remediate this issue is to apply for an Order permanently
19 sealing the Birchall Declaration at DKT #61. Given the sensitive nature of the
20 personal information involved, and the publicity surrounding this case, Defendant is
21 submitting this Application *ex parte*, and Plaintiff’s counsel have been duly notified
22 that this Application would be forthcoming.

23 The instant Application is procedurally proper, as preserving the
24 confidentiality of this erroneously-disclosed information is a matter of “genuine
25 urgency such that ‘immediate and irreparable injury, loss, or damage will result’” in
26 the absence of the requested *ex parte* relief. *See In re Intermagnetics America, Inc.*,
27 101 B.R. 191 (C.D. Cal. 1989). This personal information is protected pursuant to

1 Federal Rule of Civil Procedure 5.2 and the Central District of California Local Rule
2 5.2-1.

3 Expedited relief is necessary because the erroneously-submitted personal
4 information is presently viewable to the public via the Court's docket at entry #61; it
5 is imperative that a permanent sealing order be entered to protect this sensitive
6 information as soon as possible. Finally, this was the result of Defendant's
7 counsel's inadvertent inclusion of protected information in the filing, who are now
8 taking all necessary steps as soon as reasonably possible to rectify this error. *See*
9 *Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F.Supp. 488,492 (C.D.
10 Cal. 1995).

11 In support of this Application, Defendant relies on this *ex parte* Application,
12 the attached Memorandum of Points and Authorities, the concurrently-filed
13 Declaration of Michael T. Lifrak, all other pleadings, papers, documents and records
14 on file with the Court, and any such other and further arguments and evidence as
15 may properly be presented to the Court.

17 | DATED: September 17, 2019 Respectfully submitted,

18 QUINN EMANUEL URQUHART &
19 SULLIVAN, LLP

20 By /s/ Alex Spiro
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25 || *Attorneys for Defendant Elon Musk*

MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant Elon Musk respectfully requests that the Court issue an Order
3 permanently sealing Docket entry No. 61 in the above-captioned matter, the
4 Declaration of Jared Birchall in Support of Defendant’s Motion for Summary
5 Judgment or in the Alternative Partial Summary Judgment (the “Birchall Decl.”), on
6 the grounds that one page of Exhibit D thereto, and two pages of Exhibit E thereto
7 contain personal information regarding the Plaintiff that was inadvertently not
8 redacted at the time that it was filed with the Court. The information included in
9 these documents is information specifically protected by the Federal Rules and the
10 Court’s Local Rules.

11 Defendant’s counsel was unaware that the personal information had been
12 filed until Plaintiff’s counsel raised the issue on the evening on September 16, 2019
13 and requested its immediate removal. *See* Declaration of Michael T. Lifrak filed in
14 support of Defendant’s *Ex Parte* Application to Seal (“Lifrak Decl.”) at ¶¶ 4-5.
15 Upon discovering this error, counsel for Defendant immediately filed an
16 Administrative Motion to Remove the Document from ECF (DKT #66), and filed a
17 redacted version of the Birchall Declaration (at DKT #65). *See id.* at ¶ 7. The clerk
18 of this Court has kindly informed Defendant’s counsel that the proper mechanism to
19 remediate this issue is to apply for an Order permanently sealing the Birchall
20 Declaration at DKT #61. *See id.* at ¶ 9. Counsel for Defendant now brings the
21 instant *ex parte* Application to permanently seal the Birchall Decl. at DKT #61. As
22 set forth below, the instant Application is procedurally proper, and immediate relief
23 is needed.

A. DUE NOTICE WAS PROVIDED TO PLAINTIFFS' COUNSEL

25 On the evening of September 16, 2019, after Plaintiff's counsel informed
26 Defendant's counsel of the inclusion of Plaintiff's personal information,
27 Defendant's counsel responded that they would take immediate steps to remediate
28 the issue, and attempted to do so that evening. *See id.* at ¶¶ 5-6. On the morning of

1 September 17, 2019, counsel for Defendant was informed that the proper procedure
 2 before this Court was to file to the instant Application to Seal. *See id.* at ¶ 9. Upon
 3 learning such, Defendant's counsel informed Plaintiff's counsel that the instant
 4 Application would be filed *ex parte*. *See id.* at ¶10.

5 **B. EX PARTE RELIEF IS NECESSARY AND PROPER IN THIS
 6 CASE**

7 To justify *ex parte* relief, the moving party must "show that the moving
 8 party's cause will be irreparably prejudiced if the underlying motion is heard
 9 according to regular noticed motion procedures," and that "the crisis [requiring *ex
 10 parte* relief] occurred as a result of excusable neglect." *Mission Power Engineering
 11 Co. v. Continental Cas. Co.*, 883 F.Supp. 488, 492 (C.D. Cal. 1995). Both of the
 12 foregoing requirements are met in this case.

13 **1. Ex Parte Relief is Needed to Protect Plaintiff's Personal
 14 Information.**

15 The protection of personal data identifiers of a party, such as Plaintiff's
 16 personal information at issue here, is necessary because such information is
 17 "sensitive and private." *Christopher v. The Neiman Marcus Grp., LLC*, 2017 WL
 18 374903, at *5 (C.D. Cal. Jan. 26, 2017); *see also U.S. Dep't of Def. v. Fed. Labor
 19 Relations Auth.*, 510 U.S. 487, 500 (1994) (noting an individual's "interest in
 20 controlling the dissemination of information regarding personal matters," such as
 21 "home address").

22 "[T]he Local Rules of this district provide for the redaction of personal data
 23 identifiers." *JPMorgan Chase Bank v. Paramount Residential Mortg. Grp., Inc.*,
 24 2015 WL 11404660, at *2 (C.D. Cal. Oct. 27, 2015); *see also* F.R.C.P. 5(a)(2) and
 25 C.D. Cal. Local Rule 5.2-1. This court has previously recognized that "in order to
 26 protect any sensitive and private information," personal data identifiers should not
 27 be released to the public. *U.S. Marine Surveyors, Inc. v. Reiner*, 2016 WL 9131961,
 28 at *6 (C.D. Cal. Aug. 4, 2016); *see also* *Lost Art Liquids, LLC v. Food & Drug*

1 *Admin.*, 2018 WL 5906848, at *2 (C.D. Cal. Feb. 6, 2018) (noting “that Local Rule
 2 5.2-1 requires the redaction of personal data identifiers, including addresses, etc.
 3 from Court filings” and entering “a protective order precluding public dissemination
 4 of the personal information of the individuals who submitted comments.”). And it
 5 has ordered documents containing sensitive information sealed in order to protect
 6 such information. *See U.S. Marine Surveyors*, 2016 WL 9131961, at *6 (“[T]he
 7 Court orders Exhibit 30 to the . . . Declaration provisionally sealed because, in
 8 violation of Federal Rule of Civil Procedure 5.2 and Local Rule 5.2–1, the exhibit
 9 includes a third party’s unredacted personal identifying information.”); *St Int’l Grp.,*
 10 *Inc. v. Napolitano*, 2014 WL 12561053, at *1 (C.D. Cal. Jan. 28, 2014) (noting “the
 11 Court granted the Government’s Motion to file the administrative record in this case
 12 under seal since it contains personal information subject to redaction under Federal
 13 Rule of Civil Procedure 5.2 and Local Rule 5.2-1”); *see also Baker v. FirstCom*
 14 *Music*, 2018 WL 2584814, at *7 (C.D. Cal. Jan. 16, 2018) (striking filings
 15 containing “personal information in violation of Fed. R. Civ. P. 5.2 and Local Rule
 16 5.2-1” and giving Plaintiff leave to re-file properly redacted filings).

17 Expedited relief is necessary because the erroneously-submitted personal
 18 information is presently viewable to the public via the Court’s docket at entry #61.
 19 Due to the publicity surrounding this case, it is imperative that a permanent sealing
 20 order be entered to protect this information as soon as possible.

21 **2. Counsel Inadvertently Filed Documents with Protected**
 22 **Information**

23 Moreover, the situation necessitating this *ex parte* Application was the result
 24 of Defendant’s counsel inadvertent filing of such information. When filing the
 25 Birchall Decl. at DKT #61, on the morning of Monday, September 16, counsel
 26 unintentionally and unknowingly included three pages containing unredacted
 27 personal information in that document, specifically, Plaintiff’s address, passport
 28 information, and birth date. *See* Lifrak Decl. at ¶¶ 3-4. As soon as Plaintiffs’

1 counsel informed Defendant’s counsel of this error on the evening of Monday,
2 September 16, corrective action was immediately taken. *See id.* at ¶¶ 5-7. On the
3 morning of September 17 the clerk of this Court informed Defendant’s counsel that
4 the only way to permanently remediate the error was via the instant Application.
5 *See id.* at ¶9. Accordingly, Defendant’s counsel provided notice to Plaintiff’s
6 counsel, and this Application was prepared and filed *ex parte*. Counsel sincerely
7 apologizes for the inconvenience caused by this error.

CONCLUSION

9 For the reasons stated above, Defendant respectfully requests that the Court
10 issue an order permanently sealing Docket Entry #61 entitled “Declaration of Jared
11 Birchall in support of Defendant’s Motion for Summary Judgement or in the
12 alternative Partial Summary Judgment,” in order to protect the personal information
13 contained therein.

15 | DATED: September 17, 2019 Respectfully submitted,

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SULLIVAN, LLP

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